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10/763,128	01/22/2004	Brant D. Nystrom	2003-0485.02	6187
21972 7590 06/20/2008 LEXMARK INTERNATIONAL, INC. INTELLECTUAL PROPERTY LAW DEPARTMENT 740 WEST NEW CIRCLE ROAD BLDG. 082-1 LEXINGTON, KY 40550-0999				
EXAMINER				
ABDI, AMARA				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/763,128	Applicant(s) NYSTROM ET AL.
Examiner Amara Abdi	Art Unit 2624

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05/27/2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: 2,7-9 and 17-19
Claim(s) rejected: 1,3-6,10-16 and 20-24
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see continued sheet
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____

/Jingge Wu/
Supervisory Patent Examiner, Art Unit 2624

/Amara Abdi/
Examiner, Art Unit 2624

1. Applicant's argues that the methods and systems defined by claims 1-24 of the subject application are nonobvious over patentably distinguishable from Sussman et al. in view of Miyamoto. Furthermore, Miyamoto is non-analogous art and, as such, cannot serve as the basis for a rejection.

However, in response to the Applicant's argument, first, in response the applicant's arguments that the claims 1-24 of the subject application are nonobvious over patentably distinguishable from Sussman et al. in view of Miyamoto, The Examiner would like to point out the following precision:

Sussman et al. teaches a moving-window, histogram equalization method of processing images (column 25, line 44-47), system (column 2, line 40-41), and computer program (column 6, line 26-30), the method comprising: breaking the image into a plurality of tiles (column 6, line 39-41); processing each of the plurality of tiles by (column 5, line 59-60), (it is read that the image processor is processing the plurality of tiles) by obtaining a control parameter (column 27, line 35-37); determining a histogram for one of the plurality of tiles (column 9, line 21-23), (the determining of histogram is read as the same concept as the determining of a histogram area), determining an area of the image that includes the one of the plurality of tiles and information outside the one of the plurality of tiles (column 10, line 15-18); creating a first output by performing a histogram equalization on the area (column 9, line 21-23); creating a second output based on the control parameter and the first output (column 15, line 64-67); and using the second output to process the one of the plurality of tiles (column 16-line 1-3).

Sussman et al. do not explicitly teach the concentration ratio.

Miyamoto teaches the concentration ratio (paragraph [0030], line 8-10).

In addition, the KSR, states: "The claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention".

Because both references Sussman et al. and Miyamoto teaches histogram equalization method of processing images, and determining the concentration ratio, it would have been obvious to one skilled in the art to substitute one method for the other to achieve the predictable result of improving the image quality in the forgoing image forming method (paragraph [0015], line 1-3).

Second, the Examiner would like to point out the method of Miyamoto is read the broad claim language calls for "determining a concentration ratio" because the claim language does not specify any details about the determining a concentration ratio. In more specific, the claim language does not specify that the concentration ratio determines the smoothness of an image or portion of an image and is defined in terms of the population. That any method of determining a concentration ratio could be read the broad claim. The specification is not measure of invention. Therefore, limitations contained therein can not be read into the claims for the purpose of avoiding the prior art. *In re Spork*, 55CCPA 743, 386 F. 2d 924, 155 USPQ 687 (1968). The concentration ratio is considered just a number if form of ratio, therefore, the use of the concentration ratio of the liquid is just a number in form of ratio, therefore, Miyamoto and Sussman are analogous, and could be used together as a combination.

Therefore, the rejection of claims 1, 10, 20, and 24 is good and should be sustained.

2. Applicant's argues that Sussman et al. does not teach creating of a second output based on the control parameter and the first output.

However, in response to the Applicant's arguments, the Examiner disagrees, because, Sussman et al. clearly shows the creating of a second output based on the control parameter and the first output (see column 15, line 64-67).

3. Applicant's argues that the methods and systems as defined by claims 3 and 13 are nonobvious over patentably distinguishable from Sussman et al. and Miyamoto further in view of Swada et al.

However, in response to the Applicant's arguments, the Examiner disagrees because of the following reason:

Sussman et al. and Miyamoto disclose all the subject matter as described above in a. Sussman et al. and Miyamoto do not explicitly mention the creating of the first and second look-up table. Sawada et al., teaches an image processing apparatus, where creating the first lookup table (column 4, line 9-12), and the second lookup table (column 4, line 15-17). In addition the Ksr states: "All the claimed elements were known in the prior art and one skilled in art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yield predictable results to one of ordinary skill in the art at the time of the invention". Thus, it would have been obvious to one having ordinary skill in the art to use the image processing apparatus though by Sawada et al., where creating the first and second lookup table, in the histogram equalization method as shown in Sussman et al. reference, the process of creating of lookup table could be used in combination with the method of moving window to achieve the predictable results of transferring a digital image faster to suit the needs of print engine to print the object in real time (column 3, line 8-9). Therefore, the rejection of claims 3 and 13 is good and should be sustained.

4. Applicant's argues that the methods and systems as defined by claims 11 and 21 are nonobvious over patentably distinguishable from Sussman et al. and Miyamoto further in view of Hannah.

However, in response to the Applicant's argument, the Examiner disagrees for the following reason:

As described in a) Sussman et al. and Miyamoto teaches all the limitation of claims 10 and 20. Sussman et al. and Miyamoto do not explicitly mention the coupling of the printer to the processor. Hanna, teaches a digital copying system using a high-speed data bus without the use of data buffers, where the printer is coupled to the processor (column 3, line 14-16). In addition, the Ksr states: "All the claimed elements were known in the prior art and one skilled in art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yield predictable results to one of ordinary skill in the art at the time of the invention".

Thus, it would have been obvious to one having ordinary skill in the art to use the coupling system of the printer to the processor as though by Hanna, in the moving window of processing image as shown by Sussman et al. since the coupling of the printer to the process could be used in the moving window of processing image to achieve a predictable result of transferring a digital image faster to suit the needed of print engine to print the object in real time (column 3, line 8-9).

Therefore, the rejection of claims 11 and 21 is good and should be sustained.

5. Applicant's argues that the methods and systems as defined by claims 12 and 22 are nonobvious over patentably distinguishable from Sussman et al. and Miyamoto further in view of Safai. However, in response to the Applicant's argument, the Examiner disagrees for the following reason: As described in a) Sussman et al. and Miyamoto teaches all the limitation of claims 10 and 20. Sussman et al. and Miyamoto do not explicitly mention the coupling of the image capture device to the processor. Safai, teaches a digital camera, where the imaging unit imaging unit is connected to the digital image processor (Fig. 2A, paragraph [0035], line 3-5). In addition the Ksr states: "All the claimed elements were known in the prior art and one skilled in art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yield predictable results to one of ordinary skill in the art at the time of the invention". Thus, it would have been obvious to one having ordinary skill in the art to use the coupling system of the image capture device to the processor as though by Safai, in the moving window of processing image as shown by Sussman et al. since the coupling of the image capture to the process could be used in the moving window of processing image to achieve a predictable result to have available components that can be used by a variety of digital camera manufacturers, regardless of their specific image sensor, color interpolation scheme (paragraph [0010], line 2-4). Therefore, the rejection of claims 12 and 22 is good and should be sustained.

6. Applicant's argues that the method defined by claim 23 is nonobvious over and patentably distinguishable from Paik et al. in view of Miyamoto. However, in response to the Applicant's argument, the Examiner disagrees for the following reason: First, the Examiner would like to point out the method of Miyamoto is read the broad claim language calls for "determining a concentration ratio" because the claim language does not specify any details about the determining a concentration ratio. In more specific, the claim language does not specify that the concentration ratio determines the smoothness of an image or portion of an image and is defined in terms of the population. That any method of determining a concentration ratio could be read the broad claim. The specification is not measure of invention. Therefore, limitations contained therein can not be read into the claims for the purpose of avoiding the prior art. *In re Spork*, 55CCPA 743, 386 F. 2d 924, 155 USPQ 687 (1968). The concentration ratio is considered just a number if form of ratio, therefore, the use of the concentration ratio of the liquid is just a number in form of ratio, therefore, Miyamoto and Paik are analogous, and could be used together as a combination. Second, in response to the applicant's arguments that Miyamoto is non-analogous art that may not form a basis for rejecting the claimed subject matter, the Examiner would like to point out the following precision: Paik et al. teaches a method of processing an image, comprising: capturing an image of an object (column 8, line 49-56); and applying controlled, equalization to an image generated by the image capture device 9column 10, line 6-16). Paik et al. do not explicitly mention the use of a concentration ratio. Miyamoto teaches the concentration ratio (paragraph [0030], line 8-10). In addition, the KSR, states: "The claim would have been obvious because the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of the invention". Because both references Paik et al and Miyamoto teaches a method of processing an image, and determining the concentration ratio, it would have been obvious to one skilled in the art to substitute one method for the other to achieve the predictable result of improving the image quality in the forgoing image forming method (paragraph [0015], line 1-3). Therefore, the rejection of claims 13 is good and should be sustained.